

# Notice of Allowability

Application No.

10/716,976

Examiner

Traviss C. McIntosh

Applicant(s)

REMENAR ET AL.

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## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RCE filed on 10/26/07.
2. ☒ The allowed claim(s) is/are 62 and 63.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date 10/26/07
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

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***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 10/26/2007 has been entered.

**EXAMINER'S AMENDMENT**

The examiner's amendment set forth in the allowance mailed on 8/23/2007 is set forth again below for clarity.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mary Appollina on 8/15/2007.

The application has been amended as follows:

In the specification, the 1<sup>st</sup> paragraph has been deleted and replaced by the paragraph:

This application is a continuation of co-pending application U.S. Serial No. 10/295,995, filed November 18, 2002, now U.S. Patent No. 6,699,840; which is a continuation of U.S. Serial

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No. 10/232,589, filed September 3, 2002, now U.S. Patent No. 6,559,293; which claims the benefit of U.S. Serial Nos. 60/356,764 (filed February 15, 2002); 60/380,288 (filed May 15, 2002); and 60/406,974 (filed August 30, 2002), all of which are incorporated herein by reference in their entireties. This application is also a continuation of co-pending application U.S. Serial No. 10/637,829, filed August 8, 2003, now abandoned; which is a continuation of U.S. Serial No. 10/232,589, filed September 3, 2002, now U.S. Patent No. 6,559,293; which claims the benefit of U.S. Serial Nos. 60/356,764 (filed February 15, 2002); 60/380,288 (filed May 15, 2002); and 60/406,974 (filed August 30, 2002), all of which are incorporated herein by reference in their entireties.

In the claims:

The last 4 lines of claim 62 have been deleted and replaced by the phrase:

“located within the cavity, wherein the drug layer comprises topiramate sodium trihydrate, or a polymorph thereof”.

The last 4 lines of claim 63 have been deleted and replaced by the phrase:

“the drug layer, wherein the active agent formulation comprises topiramate sodium trihydrate, or a polymorph thereof”.

***Allowable Subject Matter***

Claims 62-63 are allowed. The following is an examiner's statement of reasons for allowance: the prior art is not seen to teach or fairly suggest the claimed dosage forms

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comprising topiramate sodium trihydrate as set forth in the instant claims. The closest prior art is seen to be US 6,699,840, which is drawn to topiramate sodium trihydrate, however, a terminal disclaimer has been filed over this patent. The Information Disclosure Statement filed 10/26/2007 is not seen to patentably effect the pending claims.

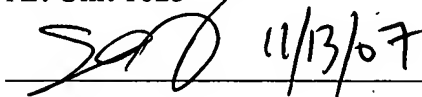
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traviss C. McIntosh whose telephone number is 571-272-0657. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Traviss McIntosh  
November 13, 2007

Shaojia A. Jiang  
Supervisory Patent Examiner  
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 11/13/07